

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

	X
LORI JO VINCENT, RUTH ANN	:
GUTIERREZ, LINDA U. GARRIDO, and	:
JOHN GARRIDO, on behalf of themselves and	:
all others similarly situated,	:
	No. 03 CV 2876 (JGK)
Plaintiffs,	:
	:
- against -	:
	MOSS CODILIS' MOTION FOR
	SUMMARY JUDGMENT
THE MONEY STORE, TMS MORTGAGE,	:
INC., HOMEQ SERVICING CORP., and	:
MOSS, CODILIS, STAWIARSKI, MORRIS,	:
SCHNEIDER & PRIOR, LLP,	:
	:
Defendants.	:
	X

Moss, Codilis, Stawiarski, Morris, Schneider & Prior, LLP ("Moss Codilis"), pursuant to Federal Rule of Civil Procedure 56, hereby moves this Court to enter summary judgment in its favor and against Plaintiffs and in support thereof states as follows:

1. Plaintiffs have asserted claims against Moss Codilis based on fraud, unjust enrichment, a now-repealed Colorado statute, and the California Business and Professions Code. Each of these claims is based exclusively on Plaintiffs' allegation that Moss Codilis engaged in the unauthorized practice of law. The claims centered on Moss Codilis' work on behalf of The Money Store ("TMS") to generate and mail thousands of default notices to TMS borrowers who were delinquent on their home loans (the "Breach Letter Program"). Specifically, Plaintiffs allege that during the course of her day-to-day responsibility for overseeing the generation and mailing of the default notices, Ms. Nash, an unlicensed attorney, was engaged in the

unauthorized practice of law. Thus, Plaintiffs claim that Moss Codilis had no right to collect fees from TMS for Moss Codilis' work on the Breach Letter Program, and that those fees must be returned to the Plaintiffs who reimbursed TMS for these fees.

2. The undisputed facts, however, show that there was no such unauthorized practice. Ms. Nash's supervisor, a partner and duly-licensed attorney at Moss Codilis, performed the legal work involved in creating the template letters for the Breach Letter Program to make sure they conformed with applicable state and federal law. The remainder of the work was an exercise in mass production overseen by Ms. Nash. Her function was administrative, and she did not engage in the practice of law at all.

3. Furthermore, Ms. Nash's responsibility with the Breach Letter Program all but ended in late 1999, when Moss Codilis hired Valerie Bromley to replace Ms. Nash in that role. Ms. Bromley became a duly licensed attorney in October 1999. Plaintiff Vincent's Breach Letter was sent on or about March 22, 2000, during the time when Ms. Nash had only limited responsibility over the Breach Letter Program and a Colorado-licensed attorney had replaced her. Thus, Plaintiff Vincent's claim fails.

4. Finally, Plaintiff Gutierrez's claim fails because she was never charged for fees associated with the Breach Letters and therefore, she have no standing to challenge the fees Moss Codilis charged to TMS under any theory articulated by Plaintiffs. Gutierrez's claim is further barred by the doctrine of judicial estoppel because she failed to disclose her claim in this case during her 2004 bankruptcy. Gutierrez's claim also fails for the same reason as Vincent's claim – she received her Breach Letters in September and October of 2000, during the time when a Colorado-licensed attorney had replaced Ms. Nash.

For these reasons which are explained in detail in Moss Codilis' accompanying Memorandum in Support, Moss Codilis respectfully requests that this Court grant its Motion for Summary Judgment, and enter judgment in its favor and against Plaintiffs.

Dated: November 12, 2010

MOSS, CODILIS, STAWIARSKI, MORRIS,
SCHNEIDER & PRIOR, LLP

By: /s/ David J. Chizewer

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused a copy of **MOSS CODILIS'** **MOTION FOR SUMMARY JUDGMENT** to be served via on November 12, 2010 upon the following:

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